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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 131119977-4381-02]

RIN 0648-XD640

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Pacific Whiting Allocations and Fishery Closure; Pacific Whiting Seasons

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Reapportionment of tribal Pacific whiting allocation, and implementation of an Ocean Salmon Conservation Zone to protect Chinook salmon.

SUMMARY: This document announces the reapportionment of 45,000 metric tons (mt) of Pacific whiting from the tribal allocation to the non-tribal commercial fishery sectors via two actions, in order to allow full utilization of the Pacific whiting resource. It also announces the implementation of an Ocean Salmon Conservation Zone that prohibited the targeting of Pacific whiting with midwater trawl gear shoreward of approximately 100 fathoms (fm) (183 m) to reduce Chinook salmon bycatch in the Pacific whiting fishery.

DATES: The rules set out in this document were made through automatic action, and are published in the Federal Register as soon as practicable after they are issued. The Ocean Salmon Conservation Zone was effective 0800 local time October 20, 2014 until December 31, 2014. The reapportionments of Pacific whiting were effective from 1200 local time, September 12, 2014 (25,000 mt) and 2000 local time October 23, 2014 (additional 20,000 mt), until December 31, 2014. Comments will be accepted through [insert date 15 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by NOAA-NMFS-2014-0020 by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal at www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0020, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- Mail: William W. Stelle, Jr., Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115-0070, Attn: Miako Ushio.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record. All personal identifying information (e.g., name,

address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Miako Ushio (West Coast Region, NMFS), phone: 206-526-4644 or e-mail: miako.ushio@noaa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Access

This document is accessible via the Internet at the Office of the Federal Register's Website at

<http://www.gpo.gov/fdsys/search/home.action>. Background

information and documents are available at the Pacific Fishery Management Council's website at <http://www.pcouncil.org/>.

Pacific Whiting

Pacific whiting (Merluccius productus) is a very productive species with highly variable recruitment (the biomass of fish that mature and enter the fishery each year) and a relatively short life span when compared to other groundfish species. Whiting has the largest (by volume) annual allowable harvest levels of the more than 90 groundfish species managed under the Pacific Coast Groundfish Fishery Management Plan (FMP), which governs the groundfish fishery off Washington, Oregon, and California. The coastwide whiting stock is managed by both the United States and Canada, and mature whiting are

commonly available to vessels operating in U.S. waters from April through December. Background on the stock assessment for and the establishment of the 2014 Total Allowable Catch (TAC) for Pacific whiting is provided in the final rule for the 2014 whiting harvest specifications, published May 13, 2014 (79 FR 27198). Pacific whiting is allocated to the Washington Coast treaty tribes (tribal fishery), and to three non-tribal commercial sectors: the catcher/processor cooperative (C/P Coop), the mothership cooperative (MS Coop), and the Shorebased Individual Fishery Quota (IFQ) Program.

This document announces the reapportionment of 45,000 mt of Pacific whiting from the tribal allocation to the non-tribal commercial sectors. On September 12, 2014, 25,000 mt of Pacific whiting was reapportioned, followed by a second reapportionment of 20,000 mt on October 23, 2014. Regulations at 50 CFR 660.131(h) contain provisions that allow the Regional Administrator to reallocate that portion of the Pacific whiting tribal allocation specified at § 660.50 that will not be harvested by the end of the fishing year to other sectors. This action also announces the implementation of the Ocean Salmon Conservation Zone on October 20, 2014 pursuant to regulations at § 660.131(c) and § 660.60(d), subpart C.

Pacific Whiting Reapportionment

For 2014, the Washington Coast treaty tribes were allocated 55,336 mt of Pacific whiting. The best available information through

September 12, 2014, indicated that at least 25,000 mt of the tribal allocation would not be harvested by December 31, 2014. To allow for full utilization of the resource, NMFS reapportioned 25,000 mt to the shorebased IFQ Program, C/P Coop and MS Coop in proportion to each sector's original allocation on September 12, 2014. Reapportioning this amount was expected to allow for greater attainment of the TAC while not limiting tribal harvest opportunities for the remainder of the year. Subsequently, the C/P Coop, MS Coop, and Shorebased IFQ sectors expressed an interest in additional harvest of Pacific whiting via written notice to NMFS.

The best available information on October 22, 2014, indicated that an additional 20,000 mt of the tribal allocation would not be harvested by December 31, 2014. To allow for full utilization the resource, NMFS reapportioned an additional 20,000 mt of the non-tribal sector and distributed to the C/P Coop and MS Coop in proportion to each sector's original allocation on October 23, 2014. As explained below, the Shorebased IFQ Program's share of the second reapportionment was not distributed due to concerns about Chinook salmon catch.

Reapportioning a combined total of 45,000 mt was expected to allow for a greater likelihood of attaining the OY while not limiting tribal harvest opportunities for the remainder of the year. The revised

Pacific whiting allocations for 2014 are: Tribal 10,336 mt, C/P Coop 103,486 mt; MS Coop 73,049 mt; and Shorebased IFQ Program 127,835 mt. Ocean Salmon Conservation Zone and Chinook Salmon Bycatch in the Primary Whiting Season

Chinook salmon protected under the Endangered Species Act (ESA) are caught as bycatch in the Pacific whiting fishery. As the result of previous ESA consultations, multiple steps have been taken in the fishery to minimize rates of Chinook salmon bycatch. The currently applicable incidental take statement requires reinitiation of consultation if the Pacific whiting fishery exceeds an 11,000-Chinook salmon annual bycatch amount. As reported in the 2006 Supplemental Biological Opinion on the Pacific Coast Groundfish, historic fishery data indicates that Chinook salmon bycatch rates can be highest in depths less than 100 fathoms (fm) (183 m) and early in the season (May and June), although bycatch rates can vary.

When NMFS projects that the Pacific whiting fishery may incidentally take in excess of 11,000 Chinook salmon within a calendar year, an Ocean Salmon Conservation Zone may be implemented through an automatic action (50 CFR 660.60(d), subpart C). The Ocean Salmon Conservation Zone prohibits the targeting of Pacific whiting with midwater trawl gear shoreward of the 100 fm depth contour (§ 660.131(c)).

As of October 17, 2014, the best available information indicated

that the Pacific whiting fishery had taken at least 11,000 Chinook salmon. Accordingly, NMFS has reinitiated consultation on the effect of the groundfish fishery on salmonids listed as endangered or threatened, and implemented the Ocean Salmon Conservation Zone to reduce the effect of the whiting fishery on salmon for the remainder of the 2014 season. Vessels fishing in the Pacific whiting primary seasons were prohibited from targeting Pacific whiting with midwater trawl gear in all waters shoreward of a boundary line approximating the 100 fm (183 m) depth contour as of 0800, local time, October 20, 2014. Latitude/longitude coordinates defining the boundary line that approximates the 100 fm (183 m) depth contour are provided at § 660.73, subpart C.

Reapportionment Effect on Chinook Salmon

NMFS concluded that distributing the reapportioned whiting to the at-sea sectors (C/P Coop and MS Coop) would not substantially increase the overall Chinook bycatch rates for the Pacific whiting fishery because these sectors had taken voluntary steps to reduce Chinook salmon bycatch, including fishing outside of 150 fm, and had notified NMFS in writing that they would cease fishing if they reached the bycatch numbers projected in the absence of additional reallocation.

The Shorebased IFQ program tends to fish closer to shore to reduce operating costs. As a consequence, the shoreside sector tends to have

higher bycatch rates than the at-sea sectors. For this reason, the Pacific Fishery Management Council (PFMC) recommended via emergency meeting on October 17, 2014, that any additional reapportioned fish be distributed to the shorebased sector after attainment of their existing allocation in conjunction with salmon conservation measures implemented through inseason action. The Shorebased IFQ program did not attain their existing allocation, the Shorebased IFQ share of the second reapportionment was not distributed, and no additional salmon conservation measures were taken. Emails sent directly to fishing businesses and individuals, and postings on the West Coast Region's internet site were used to provide actual notice to the affected fishers. Reapportionment was effective the same day as the notice, while implementation of the Ocean Salmon Conservation Zone was effective three days after the Public Notice, to allow for additional time for the public to become aware of the change in depth restrictions.

Classification

This action is authorized by the regulations implementing the FMP. The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment pursuant to 5 U.S.C. 553(b) (B) because such notification would be impracticable and contrary to the public interest. It was contrary to public interest to provide prior notice and comment on the implementation of the Ocean

Salmon Conservation Zone because conservation concerns required taking immediate action on current catch information to reduce take of Chinook salmon. The closed area implemented by this rule needed to be in effect during the remainder of the 2014 primary season. If the agency were to conduct a proposed and final rulemaking for this action, the rule would not likely have been finalized until after the whiting fisheries had achieved their 2014 whiting quotas. The bycatch of ESA-listed salmon could have continued unabated during this time. Providing prior notice and comment was impracticable because affording prior notice and opportunity for public comment would have impeded the agency's mandated duty to manage fisheries to protect endangered and threatened salmon. Implementing the Ocean Salmon Conservation Zone and reapportioning as quickly as possible was necessary to protect Chinook salmon and to allow access to the remaining portion of the Pacific whiting TAC prior to the onset of weather conditions that would make fishing unsafe. As previously noted, actual notice of the reapportionment was provided to fishers. Prior notice and opportunity for public comment on this reapportionment was impracticable because NMFS had insufficient time to provide prior notice and the opportunity for public comment between the time the information about the progress of the fishery needed to make this determination became available and the time at which fishery modifications had to be implemented in order to allow fishers access to the available fish during the remainder

of the fishing season. Additionally, it is not practical for vessels to keep crews waiting for additional quota, so timely reapportionment of uncaught quota to these sectors was necessary to keep workers in the C/P Coop and Mothership Coops employed. For the same reasons, the AA also finds good cause to waive the 30-day delay in effectiveness for these actions, required under 5 U.S.C. 553(d)(3).

These actions are authorized by §§660.55 (i), 660.60(d) and 660.131(h) and are exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 et seq and 16 U.S.C. 773 et seq.

Dated: February 5, 2015

Emily H. Menashes,
Acting Director,
Office of Sustainable Fisheries,
National Marine Fisheries Service.

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